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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,575	12/09/2004	Victor Lu	H0004019 (4780)	1366
62593	7590	08/11/2008	EXAMINER	
BUCHALTER NEMER			SMOOT, STEPHEN W	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,575	<b>Applicant(s)</b> LU ET AL.
	<b>Examiner</b> Stephen W. Smoot	<b>Art Unit</b> 2813

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 May 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) 22 and 23 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 December 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 4-16-08
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

This Office action is in response to applicant's amendment filed on 12 May 2008.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gnade et al. (EP 0 687 004 A1 – from applicant's IDS).

Referring to Figs. 1-2 and page 4, line 9 to page 7, line 58, Gnade et al. disclose a low dielectric constant multilayer dielectric structure that includes the following structural features:

- An insulating layer (22) (i.e. a substrate);

- A porous dielectric layer (28) with a porosity that is greater than 50% and with a dielectric constant that is less than 2.0 formed on the insulating layer (22) (also see page 9, lines 9-16);
- In a specific example, the porous dielectric layer (28) is about 80% porous and has a dielectric constant that is less than 1.5 (see page 4, lines 42-45);
- A less porous dielectric layer (29) with a porosity that can range from 15% to 50% formed on the porous dielectric layer (28);
- A non-porous capping layer (30) formed on the less porous dielectric layer (29);
- The capping layer (30) can be silicon dioxide (see page 4, lines 38-41), which has a dielectric constant of about 3.9 (also see page 2, line 20-22).

These are structural limitations as set forth in claims 1-3, 11-12, 15 of the applicant's invention.

Regarding claims 4-5, 8-9, Tsui et al. (US 6,208,030 B1) is submitted as evidence to show that silicon dioxide with a porosity of 15 % has a dielectric constant of about 3.5, while silicon dioxide with a porosity of 48 % has a dielectric constant of about 2.5 (see column 6, lines 1-5).

Regarding claims 6, 10, the porous layers (28, 29) are formed from TEOS-based precursors, which implies that both layers include silicon oxide.

Regarding claim 13, Figs. 3A-3D of Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) indicate that the thickness of the less porous dielectric layer (29) can be about 10 % to about 50 % of the total thickness, which corresponds to a ratio that ranges from 0.1 to 0.5.

However, Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) lack the limitation of the less porous dielectric layer having a porosity of about 10 % or less (a limitation of claim 1) and the limitation of the less porous dielectric having a porosity that ranges from about 0.1 % to about 13 % (the limitation of claim 7).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the low dielectric constant multilayer dielectric structure of Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) to include a less porous dielectric layer with a porosity of about 10 % or less through routine experimentation in order to discover the workable ranges of their structure, unless the applicant can show that the as-claimed porosity ranges are critical to the invention [see *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA)].

Regarding claim 14, the adherence of the multilayer structure of Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) is presumed to be sufficient to pass the ASTM D 3359-97 test because their structure is substantially identical to the applicant's as-claimed structure and, accordingly, the burden is shifted to the applicant to show otherwise per MPEP section 2112.01.

3. Claims 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) in view of Gallagher et al. (US 6,596,467 B2).

Referring to Figs. 1-2 and page 4, line 9 to page 7, line 58, Gnade et al. disclose a method for forming a low dielectric constant multilayer dielectric structure that includes the following features:

- An insulating layer (22) (i.e. a substrate);
- A porous dielectric layer (28) with a porosity that is greater than 50% formed on the insulating layer (22) (also see page 9, lines 9-16);
- In a specific example, the porous dielectric layer (28) is about 80% porous (see page 4, lines 42-45);
- A less porous dielectric layer (29) with a porosity that can range from 15% to 50% formed on the porous dielectric layer (28);
- Both porous dielectric layers (28, 29) are formed using a TEOS precursor (ie an ethoxysilane pre-polymer) and using ammonium hydroxide as an additive to increase the gelation rate (i.e. a metal-ion-free onium compound);
- The porous dielectric layers (28, 29) are formed by drying (i.e. heating) gel sublayers (25, 26); and
- A non-porous capping layer (30) formed on the less porous dielectric layer (29).

These are limitations as set forth in claims 16-18, 20 of the applicant's invention.

Regarding claim 21, Figs. 1-2 do not indicate any infiltration between the two porous layers (28, 29).

However, Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) lack the limitations of the less porous dielectric layer having a porosity of about 10 % or less and the inclusion of a porogen in the first composition (both are limitations of claim 16).

Further, Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) lack the further limitation to claim 16 as set forth in claim 19, which is a group of compounds that the porogen is selected from.

Gallagher et al. teach the formation of a porous layer using TEOS-containing organo polysilicas as the dielectric matrix and a removable porogen that can be a functionalized aliphatic ester for defining pores that are formed by heating (see column 5, lines 21-44 and column 6, line 14 to column 7, line 50).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) and Gallagher et al. in order to form the first porous layer (28) of Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) by utilizing a porogen that contains functionalized aliphatic ester, as taught by Gallagher et al. Gallagher et al. show that using porogen has an art recognized equivalence to the method disclosed by Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) for forming a porous layer.

It also would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the low dielectric constant multilayer dielectric structure of Gnade et al. (EP 0 687 004 A1 – from applicant's IDS) and Gallagher et al. to include a less porous dielectric layer with a porosity of about 10 % or less through routine experimentation in order to discover the workable ranges of this combination, unless the applicant can show that the as-claimed porosity limitation of about 10 % or less is critical to the invention [see *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA)].

***Response to Arguments***

4. Applicant's arguments filed on 12 May 2008 have been fully considered but they are not persuasive.

The rejections of claims 1-21 are based at least in part on the conclusion that it would have been obvious to modify Gnade et al. to use lower porosities that are 10 % or less through routine experimentation to discover the workable ranges of the structure and/or method disclosed by Gnade et al. The applicant cannot overcome these rejections unless they can show that this claimed range is critical to their invention (see MPEP section 2144.05). Also, the applicant is arguing that the claims should be allowable based on features that are not claimed (i.e. the functionality as a stress buffer).

Further regarding claims 16-21, the applicant presents arguments based on the Gallagher et al. reference when taken alone. However this rejection is based on the combination of Gnade et al. and Gallagher et al. and, accordingly, the arguments should be based on the combination as a whole in which the method of Gnade et al. relies on the teachings of Gallagher et al. in order to utilize porogen.

***Allowable Subject Matter***

5. Claims 22-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: Claims 22-23 would be allowable because the prior art of record does not teach or suggest, in combination with the other claim limitations, a method for forming a multilayered dielectric structure that includes coating a substrate with a first composition that comprises a pre-polymer and a porogen to produce a porous dielectric with a porosity of about 10% or more, coating the porous dielectric layer with a second composition that comprises a silicon containing pre-polymer to produce an adhesion promoting dielectric layer with a porosity of about 10% or less, and forming a substantially nonporous capping layer on the adhesion promoting dielectric layer, wherein the first composition and the second composition include a silicon containing pre-polymer selected from the group consisting of tetraacetoxy silane, a C<sub>1</sub> to about C<sub>6</sub> alkyl or aryl-triacetoxy silane, and combinations thereof.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen W. Smoot whose telephone number is 571-272-1698. The examiner can normally be reached on Monday to Friday from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead, Jr. can be reached on 571-272-1702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen W Smoot/  
Primary Examiner  
Art Unit 2813

SWS